



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 4, 1991

Mr. Philip Barnes
Commissioner
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR91-004

Dear Mr. Barnes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10298.

You have received a request for eight categories of information relating to motor vehicle service contracts and extended warranty programs offered through automobile dealers and records relating to a specific automobile dealer. You indicate that you have no information relating to five of the eight categories. We understand you then to have information falling within the remaining categories. These are:

1. Any and all reports, audit evaluations, and investigations made of [named automobile dealer] regarding vehicle service contracts or extended warranty programs.
2. Any and all reports, audit evaluations, investigations made of [named corporation offering extended warranties] regarding vehicle service contracts or extended warranty programs.
3. Any and all reports, audits evaluations and investigations made of [named corporation offering extended warranties] regarding vehicle service contracts or extended warranty programs.

You claim that the information requested is excepted from required public disclosure under sections 3(a)(1), 3(a)(3), and 3(a)(11) of the act.

Section 3(a)(3) of the act excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general of the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In order to claim section 3(a)(3), the governmental body must show: (1) that litigation is actually pending or reasonably anticipated; and (2) that the information in question "relates" to the litigation. Open Records Decision Nos. 551 (1990); 416 (1984).

Litigation is "reasonably anticipated" if a governmental body shows that litigation involving a specific matter is realistically contemplated. In your letter requesting a decision from this office, you state:

The State Board of Insurance reasonably anticipates litigation arising from this investigation against some of the entities involved. The Unauthorized Insurance Section [of the State Board of Insurance] is in the process of referring the case to the Attorney General for such proceeding. Therefore, the requested documents are exempt from disclosure under section 3(a)(3) of the Act. Among the records exempt under this section are witness statements, investigators' reports and notes, correspondence between the State Board of Insurance and attorneys for the other entities.

We have considered the exception you claimed, specifically section 3(a)(3), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information. We need not address the other exceptions that you raise.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-004.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 10298, 8850

Enclosure: Open Records Decision No. 551 (1990)

cc: Mitchell Madden
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